

## How to Get Back German Rental Security Deposits

by Joerg Modellmog

Under German law, landlords may ask for a deposit not to exceed three-months' net rent. However, the tenant has the right to make the rental security deposit payments over a three-month period in three equal monthly shares. If the landlord and the tenant agree, instead of paying the rental security deposit into an account, the tenant may present a bank guarantee to the landlord. A good compromise is usually to put the security deposit in a joint savings account which can only be touched with both the landlord's and the tenant's consent.

The landlord has to keep the rental security deposit apart from his/her other assets in an interest-accruing account. The interest drawn by the deposit accrues to the tenant annually and increases the rental security deposit. I recommend putting a clause in the rental agreement requiring the landlord to provide proof he/she complied with these requirements, or else the tenant should get the right to withhold his rental payments until such proof is provided.

Unless the landlord agrees, the tenant may not set off the rental security deposit against any rent payments due. An exception

may apply in case of the landlord's imminent bankruptcy. By contrast, the landlord may use the rental security deposit if the tenant defaults on paying rent. Thereafter, the tenant has to settle the rental security account, again.

§ 321 BGB (German Civil Code) gives the tenant the right of retention with respect to his/her rent payments against the (endangered or lost) rental security deposit - BEFORE any insolvency procedure is started - if the landlord fails to provide proof of the legal security of the tenant's security deposit. Yet, the tenant will have to keep the set-off amount available as security deposit. Therefore, if you become aware of any financial problems of your landlord, you may exercise that right because once the insolvency proceedings start, you will only receive the rental security deposit back if the landlord kept it in accordance with the law. If the landlord misappropriated it, you merely become another ordinary creditor.

A tenant is entitled to a return of the deposit only after the premises have been turned back to the landlord. However, the landlord is entitled by law to a rea-

sonable period of time - usually 6 to 12 months(!) - to examine possible claims against the tenant, to include the final utility bill.

The moving out protocol should help to speed up this process and lead to at least a partial repayment of the rental security deposit; interest continues to accrue on the portion still withheld. In a worst-case scenario, the actual costs are settled in an annual bill, which must be presented within a 12-month period following the end of the (annual) billing year. Putting a clause in the rental agreement specifying the terms of return/settlement of the security deposit is recommended.

If the premises have been sold, the new owner/landlord has to pay back the rental security deposit to the tenant, even if the former owner/landlord did not transfer it to him/her. In any case, the former owner remains liable as a secondary debtor, if the tenant cannot obtain the rental security deposit from the new owner/landlord.

*If you have further questions, you can pick up a detailed handout at the Legal Assistance Office or make an appointment by calling DSN 483*



**Colonel Scott Arnold, 21st TSC SJA, presents Claims Examiner Karin Jordan with an Army Civilian Commendation Certificate for a job well done. Other Kaiserslautern Legal Services Center personnel receiving certificates included: Jim Wiley, Donald Davis, Joerg Modellmog, Josephine Arguelles, Martina Berndt, Conchita Dunn, Karl-Heinz Oberlaender, & Gabi Wilanowski.**



## 6% Interest Cap — An Important Servicemembers Civil Relief Act Benefit

by CPT Jeff Colemere

Interest rates on pre-service financial obligations of a service member may be limited to six percent under the Servicemembers Civil Relief Act (or the SCRA, as it is commonly called). To qualify for a reduction of an interest rate in excess of six percent, the service member must have

incurred the debt prior to entering active duty and must be able to show that his or her obligations materially affect his or her ability to pay the debt. In general, if the service member's income or overall financial welfare has been negatively impacted as a result of being ordered to active duty, there is a material

affect on ability to pay the debt. Application for the interest rate reduction is made by providing written notice to the creditor by certified mail within 180 days of entering active duty together with a copy of the service member's orders. Upon receipt of that notice, the creditor must treat the interest rate as six percent

as of the date that the service member was ordered to active duty and forgive any interest above the six percent cap. Creditors cannot defer the interest or charge additional fees—the interest must be completely forgiven. It should be noted, however, that the six percent interest cap is not applicable to federally subsidized